

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

120250

FILE: B-208898

DATE: December 30, 1982

MATTER OF: Isometrics, Inc.

DIGEST:

"All or none" language in proposed awardee's bid creates an ambiguity which cannot be resolved from the bid itself or by the application of reason. Since the proposed awardee is the low bidder on the items in question only under one of two reasonable interpretations of its bid, its bid on those items must be rejected.

Isometrics, Inc. protests the proposed award of a contract to General Steel Tank Company, Inc. under invitation for bids (IFB) No. DAAE07-82-B-5481 issued by the Department of the Army. The IFB is a small business set-aside for tank trucks. The protester essentially contends that the proposed award is improper because General Steel Tank's cover letter contains an "all or none" qualification which renders its bid ambiguous with respect to certain line items. We sustain the protest.

The solicitation requires, among other things, a total of 41 fuel servicing tank trucks and dual fuel servicing tank trucks distributed over ten line items. Five line items (items 0003, 0005, 0009, 0011 and 0023) are for a single tank truck while the other five items (item 0001, 0015, 0017, 0019 and 0021) are for multiple quantities of tank trucks. The five multiple quantity line items are broken into sub-items which designate the destination of each truck. The solicitation requests a price for each destination.

The solicitation contains the following provisions concerning the award of a contract and the acceptance of "all or none" bids:

"10(c). The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE

AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER."

"L.30. Notwithstanding paragraph 10(c) of SF 33A or any other provision hereunder, the Government expressly reserves the right to make separate awards for any individual destination specified under all items. Offerors desiring to do so may submit alternate prices as follows: (a) a price based on separate award of the quantity of each destination; (b) a price based on "All or None" award or such lesser minimum quantity as may be desired."

General Steel Tank bid on all ten of the line items for fuel servicing tank trucks and dual fuel servicing tank trucks, but qualified its bid with the following paragraph contained in the cover letter to its bid:

"The following items are priced on an all or none basis:

Item 1	8 each
Item 15	6 each
Item 17	2 each
Item 19	15 each
Item 21	5 each."

General Steel Tank was the low bidder on items 0001, 0015 and 0021 and Isometrics was the low bidder on items 0017 and 0019. The Army determined that the language in General Steel Tank's cover letter manifests an intent to bid on an all or none basis with respect to the entire group of items. Since General Steel Tank's total price for this group of items is lower than the aggregate of the low individual prices for the group of items submitted by bidders other than General Steel Tank, the Army proposed to award a contract for items 0001, 0015, 0017, 0019 and 0021 to General Steel Tank.

Isometrics contends that paragraph L.30, quoted above, preserves the Government's right to make separate awards by permitting an all or none bid only as an alternate to an unrestricted bid. To interpret the clause as permitting

all or none bids not submitted as alternates would, in Isometrics view, render the clause mere surplusage since under such an interpretation the clause would give bidders and the Government precisely the same rights and obligations as paragraph 10(c) also quoted above. Since General Steel Tank did not submit an unrestricted bid with its all or none bid, Isometrics asserts that the bid was nonresponsive because General Steel Tank impermissibly restricted the Government's right to make separate awards.

We believe paragraph L.30 is at best ambiguous concerning the submission of all or none bids. It does not by its terms state that all or none bids are permitted only as alternates, and we will not apply a restriction on all or none bidding absent clear and explicit language to that effect in the solicitation. In this regard, the Army reports that several years ago line items were not broken down by destination as they are now. Therefore, the clause was necessary to alert bidders to the possibility that multiple awards of single line items might be made if line items encompassed more than one destination. The Army agrees that under the current format of the solicitation the clause is surplusage. The Army is taking steps to eliminate the clause from future solicitations.

Isometrics also contends that the award of these items to General Steel Tank was improper because the language used in General Steel Tank's cover letter is ambiguous: it may be construed as creating an all or none bid with respect to each item (that is, the prices for item 0001, for example, are offered only if General Steel Tank is awarded a contract for all eight destinations under item 0001) or an all or none bid with respect to the items as a group (that is, the prices are offered on the five items only if General Steel Tank receives an award for all five items.) Since the intended meaning of the all or none language cannot be determined from the face of the bid, the bid on the listed items should be rejected, Isometrics asserts.

We agree with protester that the language in the cover letter is ambiguous. The solicitation permits all or none bids on a group of items or on the full quantity of one item. The phraseology employed by General Steel Tank could be interpreted as establishing either type of all or none bid.

The Army believes, however, that the award is supported by several of our decisions which state that where an application of reason removes doubt concerning a seemingly ambiguous item in a bid, then the bid may be considered. See 51 Comp. Gen. 831 (1972). The Army asserts that had General Steel Tank intended to bid all or none on each individual item, it could have done so without a cover letter by writing "all or none" beside each line item. On the other hand, a bidder may manifest an intent to bid all or none on a group of items only by inserting a separate paragraph in its bid. Since General Steel Tank inserted a separate all or none paragraph, the Army argues, it must have intended to bid all or none on the group of items. The Army also asserts that fuel servicing tank trucks may only be produced economically at a quantity of at least twelve trucks. From this proposition, the Army believes, it follows that General Steel Tank could only have intended its prices on the five listed items to be applicable to the entire group of items (which total 36) rather than to individual item quantities (which range as low as 2). These two points, the Army believes, clearly establish that the only reasonable interpretation is that General Steel Tank intended to bid all or none with respect to the group of items.

We disagree. Although a bidder could designate its intention to bid all or none on individual items by writing all or none beside each item, we think it is equally reasonable for a bidder to designate an all or none bid for individual items in a cover letter or separate paragraph. Thus, no significant inference concerning General Steel Tank's intent can be drawn from the use of the cover letter format.

We also find the Army's economical production quantity argument unpersuasive. This argument is inconsistent with the fact that General Steel Tank bid without an all or none qualification on five other items, each of which was for one fuel servicing truck to one destination. If, as the Army asserts, fuel servicing tanks may be economically bid only if at least twelve trucks are awarded, we do not understand why the bidder was willing to accept an award for an individual truck under each of the other five items. Additionally, the economic production hypothesis was derived from one conversation with one contractor after bid opening. Such tenuous and extraneous (from the bid) information cannot reasonably be relied upon to resolve an ambiguity in a bid.

We have carefully examined General Steel Tank's bid and we conclude that the Army's interpretation of the bid is reasonable. We also conclude, however, that the interpretation that General Steel Tank intended to bid all or none on each individual item listed is reasonable. In fact, we believe that in certain respects, the individual item qualification interpretation is more plausible. The trucks described under each item will vary in configuration according to fuel tank capacity, number of drive wheels, type of cab and dual vs. single fuel servicing. Thus, for the most part, the truck described by each line item is different in some way from the trucks described by the other line items. As noted, five line items are for quantities of one while five items are for multiple quantities. It is only those items with multiple quantities that General Steel Tank listed in its all or none proviso; each of the single quantity items was bid without qualification. This seems to raise an inference that General Steel Tank intended to bid all or none with respect to the full quantity of each individual item listed.

General Steel Tank states that it submitted an all or none bid on groups of items in response to two previous solicitations issued by the Army and received awards on that basis. This establishes, in General Steel Tank's view, a historical understanding concerning General Steel Tank's all or none language. General Steel Tank asserts that this course of conduct estops the Government from interpreting the all or none language in any other way.

Initially, we note that General Steel Tank has not shown, nor even asserted, that its previous bids contained language identical to the language in its present bid. In any event, a bidder's intent must be discerned from the face of the bid at the time of bid opening. United McGill Corporation and Lieb-Jackson, Inc., B-190418, February 10, 1978, 78-1 CPD 119. Moreover, the erroneous acceptance of a previous bid does not compel the agency to perpetuate the error by accepting the present bid. See Alan L. Crouch, B-207653, October 19, 1982, 82-2 CPD 345.

In conclusion, we find that General Steel Tank's all or none bid is ambiguous. The ambiguity cannot be resolved from information contained within the four corners of the bid or by the application of reason. If General Steel Tank's bid is interpreted as an all or none bid with respect to the group of items, General Steel Tank would be the low bidder on those items. If it is interpreted as an all or none bid with respect to each of the listed line items, General Steel Tank would be the low bidder for items 0001, 0015 and 0021 and Isometrics would be the low bidder with respect to items 0017 and 0019.

Where a bid is ambiguous, the bidder may be held to the meaning more favorable to the Government. 39 Comp. Gen. 546 (1960); B-146001, July 6, 1961. Here, the interpretation that the all or none qualification applies to each line item is the more favorable to the Government; the combination of General Steel Tank's low bid on items 0001, 0015 and 0021 and Isometrics low bid on items 0017 and 0019 results in a lower price for the five items than General Steel Tank's bid on all five items. Therefore, we conclude that the Army may award General Steel Tank a contract for items 0001, 0015 and 0021. We can perceive of no prejudice to Isometrics or any other bidder as a result of this construction, since General Steel Tank's bid on these items is low under either interpretation.

The protest is sustained.

Milton J. Fowler
for Comptroller General
of the United States